

REMARKS

By this Amendment, claims 84, 127, 170, 201, 233, 264, and 332-335 have been amended to recite that the trough line is “spaced away from the core.” In addition, new claims 336-339 are added. Support for the amended and new claims can be found in the original specification, drawings, and/or claims (e.g., Figs. 1A, 2, 3, 6-8, 10, and 11; and claims 96, 139, 175, 208, 238, and 271).

Consequently, claims 1-339 are pending in the application, with claims 1, 24, 26, 27, 28, 84, 127, 170, 201, 233, 264, 332, 333, 334, and 335 being independent. Of those pending claims, claims 1-83, 296-301, 308-313, and 320-325 have been allowed. In addition, claims 85-87, 90-124, 128-130, 133-167, 171-198, 204-230, 234-261, 267-293, 302-307, 314-319, and 326-331 have been withdrawn from consideration, as being allegedly drawn to non-elected species.

As an initial matter, Applicant wishes to express sincere appreciation to the Examiner for the courtesy extended to Applicant’s representative during the personal interview held on April 23, 2007. At the interview, all of the objection and rejections outstanding in the February 16, 2007 Office Action were discussed. The following remarks reflect the subject matter discussed during the interview.

Improperly Withdrawn Claims

Applicant respectfully submits that the withdrawal of at least claims 85-87, 91-97, 99-103, 105-107, 109-114, 116, 117, 120-124, 128-130, 134-140, 142-146, 148-150, 152-157, 159-160, 163-167, 171-176, 178-181, 183-185, 187-190, 192, 194-198, 205-209, 211-214, 216-218, 220-223, 225, 227-230, 234-239, 241-244, 246-248, 250-253, 255, 257-261, 268-277, 279-281, 283-286, 288, 290-293, 302-307, and 326-331 is

improper, because these claims either read on the elected species or were not subject to any of the species-election requirements applied in the Office Action dated March 22, 2006.

More specifically, in the Office Action dated March 22, 2006, the Office applied the following six species-election requirements:

1	<u>1A</u> : a wherein the "another" notch is the "second" notch (claims 89, 132, 203, and 266); and <u>1B</u> : a wherein the "another" notch is not the "second" notch (claims 90, 133, 204, and 267).
2	<u>2A</u> : a wherein the faces of the notch extend from one end of the brush to the other (original claim 4); and <u>2B</u> : a where the faces of the notch extend along only a part of a length of the brush (claims 98, 141, 177, 210, and 240).
3	<u>3A</u> : a wherein the notch back is convex (original claim 19); and <u>3B</u> : a where the notch back is planar (claims 104, 147, 182, 215, 245, and 278).
4	<u>4A</u> : a directed to the brush shape shown in Figs. 1A, 2, and 3 (original claim 10); <u>4B</u> : a directed to the brush shape shown in Fig. 6; <u>4C</u> : a directed to the brush shape shown in Fig. 7; <u>4D</u> : a directed to the brush shape shown in Fig. 8; <u>4E</u> : a directed to the brush shape shown in Fig. 9; and <u>4F</u> : a directed to the brush shape shown in Fig. 10.
5	<u>5A</u> : a wherein the trough line is straight (original claim 15); and <u>5B</u> : a wherein the trough line is curved (claims 115, 158, 191, 224, 254, and 287).
6	<u>6A</u> : a wherein the peak ridge is straight (original claim 18); and <u>6B</u> : a where the peak ridge is curved (claims 118, 119, 161, 162, 193, 226, 256, and 289).

In response to species-election requirement 1, Applicant elected Species 1A for prosecution in this application. (See Response to Election of Species Requirement dated April 24, 2006.) For the other five species-election requirements, however, the Office had asserted that Applicant constructively elected Species 2A, Species 3A, Species 4A, Species 5A, and Species 6A for prosecution in this application. These

elections should have resulted in withdrawal of only claims 90, 98, 104, 108, 115, 118, 119, 133, 141, 147, 151, 158, 161, 162, 177, 182, 186, 191, 193, 204, 210, 215, 219, 224, 226, 240, 245, 249, 254, 256, 267, 278, 282, 287, 289, and 314-319. All of the other claims (including those claims that were not subject to any of the species-election requirements) should have remained in the application for examination.

For at least these reasons, Applicant respectfully requests reinstatement and examination of each of the improperly withdrawn claims identified above. Should the Examiner continue to withdraw those claims from consideration, Applicant respectfully requests that the Examiner make the claim withdrawal final, while also acknowledging Applicant's traversal, so that Applicant will be entitled to file a petition to the Group Director seeking review of the Examiner's claim withdrawal.

Objection to Drawings

The Examiner objected to the drawings under 37 C.F.R. § 1.83(a), asserting that "the back face of the at least one notch [being] defined by bristles having varying lengths," as recited in claims 84 and 127, must be shown in the drawings. During the interview, the Examiner agreed to withdraw this objection because no additional drawing is needed.

35 U.S.C. § 112, First and Second Paragraph, Rejections

The Examiner rejected claims 84 and 127 under 35 U.S.C. § 112, first paragraph, as allegedly failing to comply with the written description requirement. In addition, the Examiner rejected claims 84, 88, 89, 125-127, 131, 132, 168, and 169 under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite. During the interview, the

Examiner agreed to withdraw these rejections because the claims fully comply with the requirements of 35 U.S.C. § 112, first and second paragraphs.

35 U.S.C. § 102(b) Rejection

Claims 84, 88, 89, 125-127, 131, 132, 168-170, 199-203, 231-233, 262-266, 294, 295, and 332-335 were rejected under 35 U.S.C. § 102(b), as being anticipated by U.S. Patent No. 4,403,624 to Montgomery (“Montgomery”).

Although Applicant does not necessarily agree with the Examiner’s apparent characterization of the claims and the alleged teachings of Montgomery, Applicant has amended each of independent claims 84, 127, 170, 201, 233, 264, and 332-335 to recite that the trough line at which the front and back faces intersect is “spaced away from the core.” As detailed below, this recitation further patentably distinguishes the claimed subject matter from Montgomery.

Montgomery discloses applicators for applying cosmetics to the eye lashes. The Examiner’s rejection relied on the embodiment shown in Figs. 11-13, which discloses an applicator that includes a handle portion 26, a rod 28 extending from the handle portion 26, and a brush portion located on an end of the handle portion 26. The brush portion includes teeth 66” affixed to the rod 28. The Examiner asserted that the handle portion 26 and the teeth 66” of Montgomery correspond to the recited “elongated core” and “bristles,” respectively. In addition, as clarified by the Examiner during the interview and depicted accordingly in annotated Fig. 13 on the right, the Examiner asserted

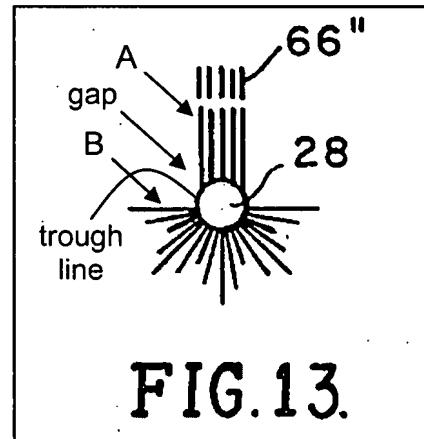


FIG.13.

that "the gap between the bristles" corresponds to the recited "notch" and that the side faces of the teeth 66" (see "A" and "B" shown in annotated Fig. 13) correspond to the recited "front face" and "back face," respectively. Also, the Examiner asserted that side faces "A" and "B" intersect one another at "the line that divides the bristles."

Without necessarily acquiescing to the Examiner's characterizations of Montgomery, Applicant submits that, even assuming, *arguendo*, that side faces "A" and "B" intersect at "the line that divides the bristles," that line is not "spaced away from the core," as recited in each of independent claims 84, 127, 170, 201, 233, 264, and 332-335. Instead, the alleged "line that divides the bristles" is on the rod 28, as clearly shown in Fig. 13.

For at least this reason, Applicant respectfully submits that each of the independent claims, and their respective dependent claims, patentably distinguish from Montgomery. Thus, Applicant respectfully requests reconsideration and withdrawal of this rejection under 35 U.S.C. § 102(b) based on Montgomery.

Conclusion

Applicant respectfully requests reconsideration of this application, withdrawal of all of the outstanding objection and rejections, and allowance of pending claims 1-339.

The Office Action contains a number of statements and characterizations regarding the claims and the related art. Applicant declines to subscribe automatically to any statement or characterization in that Office Action, regardless of whether it is addressed above.

Should the Examiner wish to discuss this case, he is invited to call the undersigned at 571-203-2774.

Please grant any extensions of time required to enter this Amendment and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

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